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November 25, 1996

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Federal Communications Commission
Office of Secretary

MEMO TO: Ms. Susan Sallet
Assistant to
The Honorable William F. Caton
Acting Secretary
The Federal Communications Commission

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Dear Ms. Sallet,

Because you have been kind enough to offer to help, I am leaving these documents for you to bring to Mr. Caton's attention. They have been written in response to the FCC's Invitation for Public Comment in Public Notice DA 96-1685, for RM-8897. Thank you so much for your assistance in this matter.

Sincerely,

Carla Levesque
Carla Levesque
Managing Partner
Great Western Cellular Partners

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Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

NOV 25 1996

Federal Communications Commission
Office of Secretary

In re:

Cellular Communications of Puerto Rico, Inc.)
Petition for Declaratory Ruling or Rulemaking) (RM-8897)
to Determine Whether Competitive Bidding Procedures)
Should be Used to License Certain Cellular)
Rural Service Areas)

To: The Commission

COMMENT IN OPPOSITION TO CELLULAR COMMUNICATIONS
OF PUERTO RICO, INC.'S PETITION FOR A DECLARATORY
RULING OR, IN THE ALTERNATIVE FOR A RULEMAKING
SUPPORTING THE USE OF COMPETITIVE BIDDING
PROCEDURES FOR THE REMAINING UNSERVED RSA MARKETS

We hereby request the Commission to uphold its Memorandum Opinion and Order (in the matter of Implementation of Section 309(j) of the Communications Act - Competitive Bidding), adopted May 27, 1994, wherein it states, "In this Order, we state our intention to use existing random selection procedures to choose from among mutually exclusive applications filed prior to July 26, 1993, for authorization to provide cellular service to unserved areas. This request is consistent with the Special Rule adopted in Section 6002(e) of the Budget Act."

INTRODUCTION

On July 12, 1996, the Commission announced by public notice that it would hold a "re-lottery" on September 18, 1996, for six markets in which the original lottery winners were found defective. CCPR now wants to open these RSA's up for competitive

bidding, particularly the license for RSA No. 727A, Ceiba, Puerto Rico. CCPR has also stated that they are an "affiliate" of an unnamed entity which currently services that market pursuant to interim operating authority ("IOA"). It is assumed that CCPR and its "affiliate" are interested in acquiring the Ceiba market.

The FCC, however, has decided to treat their petition as a petition for rulemaking on the broader applicability of using competitive bidding to award cellular licenses for all of the RSAs for which applications were filed prior to July 26, 1993, where the original tentative selectee has been disqualified and no license has been awarded to date.

Because these RSAs do fall within the scope and definition of the Omnibus Budget Reconciliation Act of 1993 ("Budget Act") and the "Special Rule"; and because the public interest would not be furthered through use of an auction; and because we are one of the lottery applicants which would be adversely affected by such a rulemaking, we believe that we are able to comment on this non-restricted proceeding from the perspective of personal participation and experience. After examining and considering the following factors, we respectfully request that the Commission dismiss CCPR's petition.

I. Equitable Factors and Congressional Intent Must Be Considered

We reiterate the Commission's opinion in its Memorandum Opinion and Order, adopted May 27, 1994, that it "would be unfair to those applicants who relied in good faith upon the existing lottery procedures; that it would cause financial harm

and economic dislocation to thousands of applicants, many of whom are small business owners; and would constitute an impermissible retroactive application of administrative rules and law".

Congress understood that applicants who are small business owners like ourselves relied upon the Commission's existing lottery procedures. "The legislative history demonstrates that Congress recognized the equities involved in the auction law's grandfathering provisions for applications on file with the Commission before July 26, 1993. For example, Congress in the Conference Report explicitly singled out the pre-July 26th applicants in the IVDS service as examples of applicants for whom the Commission would be permitted to use lotteries. H.R. Rep. No.213, 103d Cong., 1st Sess. 498 (1993) ("Conference Report")." Thus, retaining the lottery form would be consistent application of Congressional intent.

Congress also recognized that all applicants paid the required fees for the privilege of entering all available markets. CCPR's statement that "the applicants for these RSA's have already lost the lotteries and, only by virtue of the disqualification of the winning entity, are they getting a second chance", is irrelevant, and contrary to the Commissions' own rules. **Lottery applicants have historically participated in all past re-lotteries of available markets, and the reason for each market's availability was inconsequential.** Additionally, we believe the winning entities in some instances were erroneously disqualified, and are part of pending application proceedings, in

which case the respective RSA's should not be available for either auction or re-lottery.

II. Auctions Do Not Necessarily Breed Successful Competition

CCPR's suggestion that "no single applicant could have any reasonable expectation of being the lottery winner", and therefore a party "truly serious about constructing and operating systems in these RSAs will fare much better in an auction" is completely baseless. The purpose of these lotteries was to give a chance to small business owners and to promote competition in the marketplace. While small businesses can only hope that they can win a lottery, if they lose, they can still survive to grow a different way.

The Commission now knows that the unfettered auction process forced many small businesses to pay more than ten times the value of the markets they were seeking. So while these "truly serious parties" may have been the top bidder, their businesses failed, and bankruptcies have occurred. That leaves the playing field open only to the big corporations, defeats the purpose of providing opportunities for small businesses and minorities, and deadens competition. The real winner in this instance is the United States Treasury, at a terrible cost to the small business owner. Put another way, CCPR has suggested that fairness be sacrificed in order to bring revenue to the government.

III. The End Does Not Justify the Means.

It would seem inconsistent for the Commission, having

maintained that these RSA markets should be grandfathered and re-lotteried as recently as 60 days ago, and having acknowledged Congressional intent, to now suddenly reverse its entire history of rulings on this matter. Just because a lot of time has gone by, just because some RSAs have become valuable to the surrounding entities, enabling them to conveniently "round out their service areas", does not mean that they have any right to a retroactive change of application of rules and law.

There has been a great deal of critical press about the steady encroachment and possible control by British Telecom of our telecommunications industry. There was also unfavorable press when the FCC bent its rules to accommodate Rupert Murdoch's activities. It is making Americans nervous. It is making Americans angry. We believe that if the Commission decides to auction these remaining RSAs, thereby effectively keeping American-owned small businesses out of the game in which they were rightfully entitled to play, in order to let in the large and now often foreign corporations, the Commission is opening itself up to certain media scrutiny.

IV. Auctioning Will Result in a Delay in Service to the Public

The Commission has already stated that "we would have to allow these applicants to clarify their intentions and to submit the information required by Section 1.2105 of our Rules. Moreover, those who indicate no desire to participate in auctions should also be entitled to a refund of their application

processing fees. In sum, the whole application process must begin anew at a considerable cost to the applicants, and to the Commission", and therefore to the American taxpayer. We conservatively estimate this cost to be in the millions of dollars, given the number of applicants. In addition, the Commission stated that "new applications from new parties would have to be accepted, time to allow current applications to be returned and refunds issued, and time for current applicants to refile their applications under the auction process". The administrative process would be extremely expensive and inconvenient for these few small RSAs.

V. We Stand Ready to Commence Service

CCPR states that it is not clear "that a lottery winner would be in any position to commence service in the near term". We have been ready to commence service for the past seven years. From the beginning, we proceeded to arrange for all of the necessary financing and technical expertise we needed to build and operate a market. Contrary to CCPR's baseless supposition, many applicants were not speculators, but like us, had every intention of building out their systems. Their additional allegation, that "it is unlikely that most existing applicants intend to construct their own facilities and provide service to the public" is equally without foundation.

While the years have gone by, we have continued to keep ourselves educated and informed about both the industry and the individual markets. We have a current 10-year operating plan in

place, with attendant projections. We have our financing in place. We have selected our technical operations team, a company which currently successfully manages and operates over fifteen independent RSA markets in the midwest. We have traveled to the sites to learn about the geography first hand. We will be able to provide as close to a turnkey operation as is practically possible. We are prepared to work with an Interim Operating Authority.

Our partnership is composed of 100% United States citizens who are hard-working serious investors. One member's family owns a highly successful cellular construction business. Another member of our partnership owns a wireless communications company, and has participated in all phases of wireless communications development. Each of us brings some expertise to the table. We are businessmen and women who have worked together towards this goal for seven years, and we have never taken our responsibilities to the public interest lightly. We fully intend to work with the Commission in every aspect to make our cellular service business a credit to the FCC, and to provide our potential customers with the best possible product. For instance, we can offer a customized/personalized service that the big corporations cannot. We can ensure competitive rates. We have complied with every step of the process, and have never been averse to making a reasonable financial commitment to this enterprise. In order to continually improve service to the public, however, we would obviously also need to realize a

reasonable profit from our efforts within a certain time horizon.

We inform the Commission of the preceeding, because we do not believe that we are unusual in the applicant group. We feel that many have been misjudged due to the bad behavior of a few. We feel that there are thousands of us who have cared enough and believed in the free market system long enough to remain current, prepared, and ready to develop and rapidly deploy "new technologies, products, and (expanded) services for the benefit of the public, including those residing in rural areas...", and that we should not now be punished just because one company in Puerto Rico wants to change the rules to suit its own self-interest, and that of its affiliate. Neither should we be victimized by some in the government who find it an expedient way to raise revenue.


CONCLUSION

For the foregoing reasons, Great Western Cellular Partners requests that the Commission continue to honor its existing rules to use random selection to award cellular licenses for all RSAs for which applications were filed prior to July 26, 1993, where the original tentative selectee has been disqualified, where there are no pending application proceedings, and no license has been awarded to date.

Note: Great Western Cellular Partners is filing this in reliance upon Public Notice DA 96-1685, released October 24, 1996. We understand that the Commission recognizes that practical considerations prevent service of this and similar pleadings on all parties in interest in RSA proceedings involving applications for non-wireline licenses, and therefore will make documents such as this available to the public. A copy of this pleading should also be placed in the MN RSA #11 docket in accordance with the policy articulated in the Public Notice.

Respectfully submitted,

Great Western Cellular Partners



Carla Levesque
Managing Partner
61 Caribe Way
Vero Beach, FL 23963
561-388-9207
or
400 East 57th Street, Suite 10K
New York, NY 10022
212-758-7546

November 22, 1996

CERTIFICATE OF SERVICE

I, Carla Levesque, hereby certify that a copy of the foregoing "Comment in Opposition to Cellular Communications of Puerto Rico, Inc.'s Petition for a Declaratory Ruling or, in the Alternative for a Rulemaking Supporting the Use of Competitive Bidding Procedures for the Remaining Unserved RSA Markets" was served this 25th day of November by messenger on the following:

William F. Caton (Original and 4 copies)
Office of the Secretary
Federal Communications Commission
1919 M Street,, N.W., Room #222
Washington, D.C. 20554
202-418-0300

Eric J. Bash
Federal Communications Commission
Wireless Telecommunications Bureau
Commercial Wireless Division
Legal Branch
2025 M Street, N.W., Room 7130
Washington, D.C. 20554
202-418-7227

Wilbur Thomas
International Transcription Service, Inc.
2100 M Street, N.W., Room 140
Washington, D.C. 20554
202-857-3800



Carla Levesque